

Wayne F. Foraker,)	No. CV-04-2614-PHX-DGC
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
)	
Apollo Group, Inc. dba University of)	
Phoenix,)	
)	
Defendant.)	
)	
)	

First, Plaintiff argues that the Clerk should not have denied service fees of \$1,008.50 due to Plaintiff's failure to submit invoices because Plaintiff's counsel lost the invoices when her office was flooded. The Clerk requires invoices, and Plaintiff was unable to provide them. The Clerk made the judgment that Plaintiff's affidavit was not sufficient documentation of Plaintiff's service fees, and the Court will not upset this discretionary decision. *See* LRCiv 54.1(b).

1 Second, Plaintiff argues that the Clerk awarded an insufficient amount of court
2 reporter fees. Dkt. #330 at 2. The Clerk awarded Plaintiff \$1,719.01 of the requested
3 \$4,575.41, explaining that no recovery is allowed for condensed transcripts, indexing,
4 litigation support, administration fees, mini transcripts, or appearance fees. Dkt. #329.
5 Plaintiff now states, without documentation, that “[o]nly a few of these invoices” contain the
6 disallowed charges. In filing her application for court reporter fees, however, Plaintiff’s
7 counsel clearly failed to itemize each taxable type of transcript and included fees that are not
8 taxable. The Court will not overrule the Clerk’s determination of the appropriate amount of
9 taxable reporter fees. *See* LRCiv. 54.1(b), (e)(3).

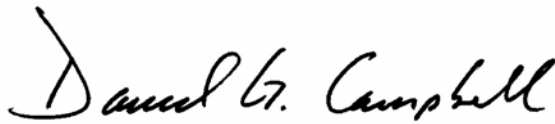
10 Third, Plaintiff objects to the Clerk’s award of \$40 rather than the requested \$4,714.25
11 for witness and expert witness fees. The Family Medical Leave Act (FMLA) provides for
12 a plaintiff’s recovery of “a reasonable attorney’s fee, reasonable expert witness fees, and
13 other costs of the action to be paid by the defendant.” 29 U.S.C. § 2617(a)(3). This does not
14 mean, however, that expert witness fees are taxable by the Clerk. To the contrary, the
15 Court’s local rules make clear that expert witness fees beyond those statutorily allowed for
16 all witnesses are not to be taxed by the Clerk. *See* LRCiv 54.1(e)(4) (“Fees for expert
17 witnesses are not taxable in a greater amount than that statutorily allowable for ordinary
18 witnesses.”) If Plaintiff was to recover expert witness fees under the FMLA, he should have
19 sought them as part of his fee application to the Court, not as a cost taxable by the Clerk. He
20 did not do so, and the Clerk correctly applied the local rules in denying Plaintiff’s request to
21 tax expert witness fees.

22 Finally, Plaintiff objects to the Clerk’s denial of \$1,661.80 he requested for
23 exemplification and copy costs. The local rules are specific in the kinds of costs that may
24 be taxed by the Clerk: “[t]he reasonable cost of copies of papers necessarily obtained from
25 third party records custodians” and “[t]he reasonable cost of documentary exhibits admitted
26 into evidence at the hearing or trial, including the provision of additional copies for the Court
27 or opposing parties.” LRCiv 54.1(e)(5). Plaintiff did not submit an itemized list of copying
28 costs that conformed with this local rule. He instead submitted an affidavit of counsel merely

1 stating "that 8,309 pages were copied that were used for court filings and to provide copies
2 to opposing counsel and client." Dkt. #305-5. The affidavit does not specify which of the
3 copies were for documents admitted in evidence, nor does it address why a copying cost of
4 20 cents per page is reasonable. Because Plaintiff failed to provide proper documentary
5 support for his claim, the request was properly denied by the Clerk.

6 **IT IS ORDERED** that Plaintiff's Motion for Issuance of Modification of Taxation
7 of Costs Order (Dkt. #330) is **denied**.

8 DATED this 9th day of August, 2007.

9
10
11 

12 _____
13 David G. Campbell
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28